



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable C. J. Wilde
County Auditor
Nueces County
Corpus Christi, Texas

Dear Sir:

Opinion No. O-2548-A
Re: Reconsideration of
Opinion No. O-2548
concerning the basis
for payment of officer's
salary in Nueces County
after the 1940 Federal
Census became official.

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. Your letter reads, in part, as follows:

"Under date of August 5, 1940 the above numbered opinion was rendered to the writer with reference to the salaries to be paid to the fee officers of Nueces County after the 1940 Federal Census became official. In this opinion it is set forth that Nueces County could not pay the salaries of the fee officers of Nueces County on the basis of the bracket of 60,001 to 100,000 inhabitants. Inasmuch as Article 3912-E states that the officers in the bracket just preceding the above mentioned, namely, 37,501 to 60,000, and in which bracket Nueces County was operating could not receive more than the maximum amount allowed such officers under the existing laws of August 24, 1935.

"On August 24, 1935 Nueces County, being in the population bracket of 37,501 to 60,000 the fee officers maximum salary was \$3,750.00. However, Article 3883 allows this amount to be increased by \$500.00, which represents one third of excess fees, thereby making the maximum \$4,250.00. In addition to the above amount there is a provision in Section 13 of Article

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3912-E which states:

"Provided that in counties having a population of 37,500 and less than 60,000 according to the last preceding Federal Census, and having an assessed valuation in excess of \$20,000,000.00 according to the last preceding approved tax roll of such county, the maximum amount allowed such officers as salaries, may be increased 1% for each \$1,000,000.00 valuation or fractional part thereof, in excess of said \$20,000,000.00 valuation over and above the maximum amount allowed such officer under laws existing on August 24, 1935."

"The valuation in Nueces County on August 24, 1935 was \$33,492,736.00. Therefore, if, in accordance with your opinion, we use the 1930 census as a measuring stick insofar as the maximum amount for fee officers is concerned, why then would not the fee officers of Nueces County be allowed an additional 14% added to the \$4,250.00 which was the maximum he could receive at that time. The additional 14% represents the valuation in excess of \$20,000,000.00 as mentioned in the above quotation. It is possible that we might go further, if we are to assume that the 37,501 to 60,000 is the measuring stick, and increase the percentage over and above the maximum of the basis of the 1944 valuation which was \$89,480,000.00, as this value is shown on the last preceding tax roll of Nueces County. If we are correct in this matter then there is a possibility of increasing the salaries of the fee officers in Nueces County by 70%. It is quite evident that the basis under which the salaries of the fee officers are to be paid remain at the figure shown for the population of the 1930 census and I respectfully refer you to Opinion O-2582 rendered to the County Attorney and County Auditor of Travis County, Texas. This opinion, on page seven, the fifth paragraph reads:

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"Your fifth question becomes moot in view of our holding that \$4,750.00 is the maximum salary to be allowed district and county officers of Travis County under the Officers' Salary Law."

"The above quotation shows that even though the 1941 census would move Travis County into the bracket of 101,000 and not more than 150,000, the officers are advised that the maximum would be \$4,750.00, which comes within the bracket of 60,001 to 100,000. We also call to your attention the fact that under Article 3912-E, Section 6, Nueces County, in accordance with the participation on the basis of per capita population in the above mentioned Section 6, is being reimbursed on the basis of the population in Nueces County according to the 1930 census. Therefore, we feel that the per capita tax is paid on the basis of the 1930 population and other counties are advised that they used the 1930 population as a measuring stick, then why should not the special provisions allowed in Section 13 of Article 3912-E apply to Nueces County and allow the fee officers to be paid on the basis of the maximum plus the percentage in valuation over and above the \$20,000,000.00 valuation mentioned in Section 13 applying to counties having a population of not more than 60,000.

"In view of the facts we respectfully ask that your Opinion O-2546 be reconsidered."

As a general provision with reference to the minimum and maximum salaries of county officials in counties having a population of not less than 20,000, nor more than 190,000, according to the last preceding Federal census, Article 3912e, Section 13, provides:

"Art. 3912e, Sec. 13. The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform

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the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; . . ."

The foregoing provision fixed the salaries of county officers, in counties within the designated population bracket, at not more than the maximum compensation allowed such officers under laws existing August 24, 1935, Nacogdoches County v. Jenkins, 140 S. W. (2d) 901. Under said Article, the maximum set forth serves as a "ceiling" on the salaries of county officers in counties within that population bracket (20,000 to 190,000), and said maximum or "ceiling" is fixed on the basis of an unchangeable past situation; this is, the maximum compensation allowed said officers under laws existing August 24, 1935. Also, we call to your attention that under laws existing August 24, 1935, there were no provisions authorizing an increase in officer's salaries in addition to the maximum fees which said officers were allowed to retain under Articles 3883 and 3896. The provisions of Article 3912e, Section 13, authorizing the percentages to be added to the foregoing maximum compensation for county officers in counties within certain population brackets and having certain assessed valuation were not effective until January 1, 1936. Therefore said percentages of increase, authorized by the "provisos" of Article 3912e, Section 13, could constitute no part of the maximum compensation fixed under laws existing August 24, 1935. With reference to said "provisos", the language of Article 3912e, Section 13, is as follows:

". . . provided that in counties having a population to twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars, according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%)

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per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; and provided that in counties having a population of thirty-seven thousand five hundred (37,500) and less than sixty thousand (60,000) according to the last preceding Federal Census, and having an assessed valuation in excess of Twenty Million (\$20,000,000.00) Dollars, according to the last preceding approved tax roll of such county, the maximum amount allowed such officers as salaries, may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Twenty Million (\$20,000,000.00) Dollars valuation over and above the maximum amount allowed such officer under laws existing on August 24, 1935."

As to population, the applicability of said "provisos" is dependent upon the population of a county according to the last preceding Federal Census. It would be possible for a county to be within a particular population bracket, according to one preceding Federal Census, and, after the next Federal Census, a county might be outside that bracket, thereby rendering the "provisos" inapplicable to that particular county. As to valuation, the applicability of the foregoing "provisos" is dependent upon the assessed valuation of a county according to the last approved tax roll. It would be possible for a county to have the required valuation one year, and, the next year, it might not have the prescribed valuation, and such condition would render the "provisos" inapplicable to that particular county. As we construe the language of Article 3912e, Section 13, when a county is within the general population bracket (20,000 - 190,000), the maximum salaries for county officers is fixed at the maximum compensation which county officers were allowed in said county under laws existing August 24, 1935, unless the population of said county (based on the last preceding Federal census) and the assessed valuation (based on the last approved tax roll) is such that one of the "provisos" is applicable to said county, thereby

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authorizing the percentage of increase to be added to the foregoing maximum compensation.

In view of the foregoing, we are constrained to adhere to the previous holdings of this department in Opinion Nos. 0-2546 and 0-2582.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

J. A. Ellis
J. A. Ellis
Assistant

JAE:ddt

APPROVED
Carl F. Foley

